Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1973.

No. 73-1106

WILLIAM COUSINS, ET AL.,

Petitioners,

vs.

PAUL T. WIGODA, ET AL.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT.

BRIEF FOR RESPONDENT IN OPPOSITION.

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INDEX.

	PAGE
Opinion Below	1
Jurisdiction	2
Questions Presented	2
Statement of the Case	2
Argument	7
I. The Illinois Appellate Court Properly Upheld the Application of the Illinois Election Code	7
II. There Is No Legitimate Question Raised Here Concerning Petitioners' Right of Association	11
III. There Has Been No Showing of Bias by the Trial Court	12
IV. This Case Presents Moot and Abstract Questions	15
Conclusion	17

Table of Cases.

Application of McSweeny, 61 Misc. 2d 869, 307 N. Y. S. 2d 88 (1970) 11

Bentman v. *7th Ward Democratic Executive Committee*, 421 Pa. 188, 199-203 (1966) 11

Carter v. *Tomlinson*, 220 S. W. 2d 351 (Tex. Civ. App., 1949) 11

Cousins v. *Wigoda*, 14 Ill. App. 3d 460, 302 N. E. 2d 614 (1st Dist., 1973) 2

Cousins v. *Wigoda*, 463 F. 2d 603, 606 (7th Cir., 1962) .. 10

Currie v. *Wall*, 211 S. W. 2d 964, 967 (Tex. Civ. App., 1948) 11

D'Alenberte v. *State ex rel. Mays*, 56 Fla. 162, 47 So. 489, 499 (1916) 11

Keane v. *National Democratic Party*, 469 F. 2d 463 (D. C. Cir., 1972) 4

Keane v. *National Democratic Party*, 409 U. S. 1 (1972) 4

Kinney v. *House*, 10 So. 2d 167, 168 (Ala., 1942) 11

Kusper v. *Pontikes*, ... U. S. ....., 42 L. W. 4003, 4005 (decided Nov. 19, 1973) 10

Lasseigne v. *Martin*, 202 So. 2d 250, 255 (La. Ct. of Appeals, 1967) 11

Malone v. *Superior Court in and for the City and County of San Francisco*, 40 Cal. 2d 546, 551, 254 P. 2d 517 (1953) 10

Morris v. *Peters*, 46 S. E. 2d 729, 738 (Ga., 1948) 11

O'Brien v. *Fuller*, 93 N. H. 221, 228, 39 A. 2d 220 (1944) 11

People ex rel. Coffey v. *Democratic General Committee*, 164 N. Y. at 341-342, 58 N. E. at 126 (1900) 12

Shelly v. *Brewer*, 68 So. 2d 573 (Fla., 1953) 11

Skolnick v. *State Electoral Board of Illinois*, 336 F. Supp. 839 (N. D. Ill., 1971) 10

State v. *Martin*, 24 Mont. 403, 62 Pac. 588 (1900) 11

State ex rel. Cook v. *Houser*, 122 Wis. 534, 100 N. W. 964 (1904) 11

State ex rel. Merrill v. *Gerow*, 79 Fla. 804, 85 So. 144, 146 (1920) 11

United States v. *Dickinson*, 465 F. 2d 496, 476 F. 2d 373 (5th Cir., 1973), *cert. denied*, ... U. S. ....., 42 L. W. 3247 (1973) 16

United States of America v. *United Mine Workers*, 330 U. S. 258, 293, *concurring opinion*, 330 U. S. 309, 310 (1947) 16

Walker v. *Birmingham*, 388 U. S. 307, 320-321 (1967) .. 16

Walker v. *Grice*, 159 S. E. 914, 917-918 (S. Car., 1931) 11

Walling v. *Lansdon*, 15 Ida. 282, 300-303 (1908) 11

Wigoda v. *Cousins*, 342 F. Supp. 82, *aff'd per curiam* (7th Cir., 1972) 3

Statutes and Rules.

Ill. Rev. Stat. Ch. 46 § 7-1 7

Ill. Sup. Ct. Rules 302(b) and 305(b), S. H. A. ch. 110A, §§ 302(b), 305(b) 5

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ON PETITION FOR WRIT OF CERTIORARI TO THE ILLINOIS APPELLATE COURT.

BRIEF FOR RESPONDENT IN OPPOSITION.

To the Honorable Chief Justice of the United States and the Associate Justices of the Supreme Court of the United States:

The respondents, Paul T. Wigoda, et al., respectfully pray that this Court deny the Petition for a Writ of Certiorari to review the judgment and opinion of the Illinois Appellate Court entered in this proceeding on September 12, 1973.

OPINION BELOW.

The opinion of the Illinois Appellate Court, 14 Ill. App. 3d 460, 302 N. E. 2d 614 (1st Dist., 1973), and the orders of the Circuit Court of Cook County in No. 72 CH 2288 (unpublished) appear in the Appendix to the Petition.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

QUESTIONS PRESENTED.

1. Whether the courts of the State of Illinois, which state by statute requires free, equal and open election for delegates to national political conventions, and which state, according to unchallenged findings of fact held such an election, may enjoin citizens of Illinois, not chosen by the electorate, from participating in a convention *as representatives* of the electorate.

2. Whether the courts in Illinois may protect the state's electoral code and the integrity of the electoral process.

3. Whether the courts of Illinois may enjoin acts which violate the state's election laws and which subvert said laws, and nullify the votes cast therein by the voters.

4. Whether there are real, as opposed to moot and now abstract constitutional issues in this case, since the convention has passed, the petitioners attended the convention as delegates and the Democratic Party rules, which give rise to the litigation, are in the process of revision.

5. Whether petitioners must obey a court order even if it is ultimately found to be incorrect.

STATEMENT OF THE CASE.

The chronology of the instant litigation is stated in the opinion of the Illinois Appellate Court reported at 14 Ill. App. 3d 460, 302 N. E. 2d 614 (1st Dist., 1973). (Appendix B-1) Brief additional comment should be made.

Petitioners misstate the injunction issued against them. Petitioners state (Pet. 2, 13, 23) that they were enjoined "from

participating in the Democratic National Convention." This is untrue. Petitioners, on unchallenged findings of fact after trial, were enjoined "from acting or purporting to act as a delegate to the Democratic Nominating Convention . . . from or on behalf of the 1st, 2nd, 3rd, 5th, 7th, 8th, 9th and 11th Congressional District of the State of Illinois or from performing the functions of delegates from the aforesaid districts . . ." (App. I-6, I-7). They were not barred from the Convention, nor was the Convention or the Democratic Party restrained in any way.

Petitioners ignore and avoid the Findings of Fact made by the trial court to support the issuance of its injunctions. These findings, which were not objected to after trial and which remain unchallenged on review are found in Appendices J and K.

On page 12 of the Petition, petitioners quote from District Judge Hubert L. Will's opinion in *Wigoda* v. *Cousins*, 342 F. Supp. 82, *aff'd per curiam* (7th Cir., 1972).

Judge Will had before him only the question of the propriety of removal. Arguments concerning the merits of the case were not made to him either orally or in writing. His statement concerning his view of the merits, recited by petitioners (Pet. p. 12), was wholly gratuitous and not the result of adversary presentation. In affirming *per curiam*, the remand by Judge Will, the Court of Appeals specifically excluded any expression of opinion concerning the merits of the case stating:

> "We express no opinion as to the effect of state law on the determination of proper delegates to the Convention." (Appendix I hereto, p. A-2)

The only injunction approved against the instant case by a court of review was that issued by the Court of Appeals for the District of Columbia on appeal in *Keane* v. *National Demo-*

cratic Party, 469 F. 2d 463 (D. C. Cir. 1972). That case was commenced in the United States District Court for the District of Columbia against the National Democratic Party by a delegate other than Wigoda and prior to a class determination in the instant case to obtain a determination that certain rules of the party such as those requiring racial quotas, etc. were unconstitutional. Certain of the petitioners in the instant case intervened in that proceeding. These certain petitioners and the Democratic National Committee moved the District Court to enjoin the instant proceedings. The District Judge (Hart) denied both prayers for the injunction. On appeal, the Court of Appeals for the District of Columbia entered the injunction. It was this injunction which was stayed by this Court upon application by Keane in *Keane* v. *National Democratic Party*, 409 U. S. 1 (1972). It should be noted that the Court of Appeals for the District of Columbia stated in its opinion in *Keane* in enjoining the prosecution of the instant action, 469 F. 2d at p. 572:

"No violation of Illinois law is at issue here."*

The instant case concerns the power of an Illinois court to prevent violation and subversion of Illinois law. Moreover, when the Court of Appeals for the District of Columbia, upon direction from this Court thereafter considered the mootness of the *Keane* case, it reinstated the judgment of the District Court which expressly refused to issue the injunction that petitioners here claim effectively barred the instant proceedings. (Appendix E.)

It should be remembered that, because of the delays encountered in the United States District Court for the Northern District of Illinois, matters concerning the Illinois delegation to the Democratic National Convention were considered on an expedited basis. This Court, in fact, held a Special session in

* Petitioners, in their appendix, erroneously state on page B-14 that this statement was made by "the trial court."

Keane and ruled on matters before it in approximately 36 hours. The injunction in the instant matter was issued by the Circuit Court of Cook County more than 48 hours prior to the commencement of the Democratic National Nominating Convention. The Rules of the Supreme Court of Illinois expressly provide for an expedited review of injunctions enabling one judge of a reviewing court to issue a stay. See S. H. A. Ch. 110A, §§ 302(b), 305(b), Ill. Sup. Ct. Rules 302(b) and 305(b). However, petitioners did not appeal nor make application for such a stay. They took no action whatever to seek review the injunction issued by the Circuit Court of Cook County until long after they had violated it and a second injunction had issued. Only then, twenty-six days after the Circuit Court acted did they seek expedited review. At such late date, their request was deni d by the Illinois Supreme Court. (Appendix B hereto)

Thus, not only did petitioners fail to challenge any of the findings of the Circuit Court at any stage of the proceedings, they also failed to seek review until after they violated the injunction issued by the Circuit Court.

Last, certain historical facts should be mentioned. After the Democratic National Convention concluded, the Vice Presidential candidate chosen by the convention (Senator Thomas Eagleton) withdrew. The Democratic Party reconvened its representatives to choose a new candidate. At this "reconvened" or "mini-convention", the various states were represented by their representatives to the Democratic National Committee. Insofar as Illinois was concerned, the representatives to this mini-convention were not chosen by petitioners here, but respondents at a state caucus from which petitioners here were enjoined from representing the Congressional Districts. The Democratic Party recognized as representatives from Illinois those persons chosen by the caucus which included

respondents. Subsequently the party has fully recognized as legitimate representatives from the State of Illinois on the Democratic National Committee only those persons chosen by that caucus. There is thus no present conflict between the Democratic Party and the Illinois Election Laws.

Subsequent to the Convention, the Democratic Party has authorized a re-examination and revision of its rules concerning delegate selection. This is in process.

ARGUMENT.

I.

The Illinois Appellate Court Properly Upheld the Application of the Illinois Election Code.

The instant case concerns the ability of the State of Illinois to protect its electoral process. The Circuit Court of Cook County, on proper application and after due notice and hearings in which all parties appeared, participated and were represented by counsel, entered the injunctions herein to protect the electoral process and the candidates and voters who participated therein. Comprehensive findings of fact were made. (App. I and J) None of the findings have ever been challenged *at any level* by petitioners. These unchallenged findings demonstrate that further review is not warranted.

Illinois, by statute, requires that delegates to the national nominating convention of political parties be elected. Ill. Rev. Stat. Ch. 46, § 7-1. The election held for delegates to the 1972 national Democratic nominating convention "was conducted pursuant to the Illinois Election Code and the Constitution of the State of Illinois and was free and equal and open to all qualified persons as candidates and voters without limitation." (App. J-5) Respondents "were elected in a free, equal, open and non-discriminatory election in which, *in accord with stipulations made by [petitioners], anyone could run for office and any qualified person could vote*. In said election, there were 180 candidates for 62 delegate seats [from the Congressional districts herein involved]." (App. I-5) (Emphasis supplied.) There were no challenges made to *any* candidate who stood for the office of delegate at any stage of the electoral process. (App. I-3, I-4) (Emphasis supplied.)

Petitioners "established themselves solely on the basis of their own authority to select delegates from [the particular Illinois

Congressional districts herein involved] and without any legal justification or authority from any other people or the laws of the State of Illinois." (App. I-5) "The process by which [petitioners] purported to become representatives of the people of the State of Illinois was secret, restrictive, discriminatory, without foundation in law and without regard or recognition to the individual citizens of the Congressional districts hereinabove mentioned who voted in the election conducted pursuant to the Illinois Election Code." (App. J-5)

On the above unchallenged findings of fact, the Circuit Court of Cook County, "enjoined and restrained [petitioners] from acting or purporting to act as a delegate to the Democratic National Convention . . . *from or on behalf of* the 1st, 2nd, 3rd, 5th, 7th, 8th, 9th or 11th Congressional Districts of the State of Illinois or from performing the functions of delegates *from the aforesaid districts*, including but not limited to voting in the aforesaid convention or in official or duly designated committees thereof." (App. I-6, I-7) Subsequently, after petitioners deliberately violated the original injunction (App. J-3) the Circuit Court enjoined them "from acting or purporting to act as a delegate or alternate [in a caucus held in Chicago, Illinois] *from or on behalf of* the 1st, 2nd, 3rd, 5th, 7th, 8th, 9th and 11th Congressional Districts of the State of Illinois or from performing the function of delegate or alternate *from or on behalf of the aforesaid districts* [at said caucus] . . ." (J-6) (Emphasis supplied)

The limited injunctions entered by the Circuit Court, which were intended only to prevent petitioners from acting as representatives of the electorate of certain specified Illinois congressional districts which had chosen others to so serve, do not merit review by this Court on certiorari.

As noted by the Illinois Appellate Court, Wigoda commenced the instant action on April 19, "the first day which the [respondents] could so act in their elective office." (App. B-4) Wigoda consistently sought to be heard on his claims brought

to prevent violation of the Illinois Election Code. Because of the various injunctions entered against Wigoda at petitioners' instance, Wigoda could not obtain a hearing on his claim until July 8. Petitioners urge, however, that even on that date for reasons of *res judicata*, there should have been no hearing. Petitioners, however, cite no authority to support invocation of the doctrine of *res judicata* to bar the presentation of issues which were at no time previously heard. The Court of Appeals for the District of Columbia enjoined the Illinois state court from hearing questions concerning illegal violations of state law even though no violation of state law was before the Court of Appeals. This Court thereafter unconditionally stayed the judgment of the Court of Appeals. It is not reasonable to contend that this Court's explicit stay of an injunction against the proceedings in the Circuit Court of Cook County, was, in fact, intended to enjoin such proceedings in that court. Petitioners' interpretation does violence to the plain language of this Court's stay order.

Subsequent to this Court's ruling, petitioners on at least three occasions moved the Court of Appeals for the District of Columbia to enjoin the instant case. When petitioners sought to enjoin the Circuit Court a second time, the Court of Appeals found:

> "Whereas on July 7, 1972, the Supreme Court of the United States stayed the judgments of this court entered herein July 5, 1972 and
>
> "Whereas we think doubts suggested by [petitioners] as to the scope of the stay entered by the Supreme Court should be resolved by interpreting the Court's stay as suspending the operation of the injunction issued by this court July 5, 1972,
>
> "The Emergency Motion for a rule to show cause is denied;" (Appendix III hereto).

The instant case actually concerns nothing more than the administration of a state's electoral process. As recently stated by this Court: " . . . Administration of the electoral process is

a matter that the Constitution largely entrusts to the states." *Kusper* v. *Pontikes*, ... U. S. ....., 42 L. W. 4003, 4005 (decided Nov. 19, 1973). It is well settled Constitutional doctrine that a state may prescribe reasonable and non-discriminatory election procedures for voting at all stages of both state and federal elections.

Similarly, the Court of Appeals for the Seventh Circuit in the course of this litigation stated:

> "There are valid reasons why the courts of Illinois may properly assume jurisdiction over some aspects of the controversy between Cousins and Wigoda. In the state complaint Wigoda has alleged full compliance with the provisions of the Illinois Election Code; Cousins has not yet disputed those allegations, but retains the right to do so. Moreover, assuming vacancies in the slate of delegates may occur, by death, resignation, or by the successful prosecution of one or more challenges before the Credentials Committee of the National Convention, Illinois law may control, or may affect, the manner of selecting substitutes or alternates. Indeed, the Rules of the National Convention contemplate reference to state law in connection with various issues." (*Cousins* v. *Wigoda*, 463 F. 2d 603, 606 (7th Cir., 1962).

In the instant case, both sides agree that the election held in Illinois for the selection of delegates was free, equal and open to all. Delegates were elected from fairly apportioned congressional districts. (Illinois Congressional districts had only recently been reapportioned in accord with an order of a federal three judge court. See *Skolnick* v. *State Electoral Board of Illinois*, 336 F. Supp. 839 [N. D. Ill. E. D., 1971].

The overwhelming weight of authority demonstrates that, where the right to political party office is regulated by a fair and non-discriminatory statute, the internal decisions or rules of party officials cannot divest a person duly elected in accordance with law of the right to hold such office. *Malone* v. *Superior Court in and for the City and County of San Francisco*,

40 Cal. 2d 546, 551, 254 P. 2d 517 (1953); *State ex rel. Cook* v. *Houser*, 122 Wis. 534, 100 N. W. 964 (1904); *Walling* v. *Lansdon*, 15 Ida. 282, 300-303 (1908); *Walker* v. *Grice*, 159 S. E. 914, 917-918 (S. Car., 1931); *Kinney* v. *House*, 10 So. 2d 167, 168 (Ala., 1942); *Bentman* v. *7th Ward Democratic Executive Committee*, 421 Pa. 188, 199-203 (1966); *O'Brien* v. *Fuller*, 93 N. H. 221, 228, 39 A. 2d 220 (1944); *Lasseigne* v. *Martin*, 202 So. 2d 250, 255 (La. Ct. of Appeals, 1967); *Shelly* v. *Brewer*, 68 So. 2d 573 (Fla. 1953); *State ex rel. Merrill* v. *Gerow*, 79 Fla. 804, 85 So. 144, 146 (1920); *D'Alenberte* v. *State ex rel. Mays*, 56 Fla. 162, 47 So. 489, 499 (1916); *Application of McSweeny*, 61 Misc. 2d 869, 307 N. Y. S. 2d 88 (1970); *Currie* v. *Wall*, 211 S. W. 2d 964, 967 (Tex. Civ. App., 1948); *Carter* v. *Tomlinson*, 220 S. W. 2d 351 (Tex. Civ. App., 1949); *Morris* v. *Peters*, 46 S. E. 2d 729, 738 (Ga., 1948); *State* v. *Martin*, 24 Mont. 403, 62 Pac. 588 (1900).

Certainly it cannot reasonably be argued that an illegally chosen delegation cannot be barred by the courts from coopting the rights of those lawfully chosen.

II.

There Is No Legitimate Question Raised Here Concerning Petitioners' Right of Association.

This case does not concern petitioners' "right of association." (See Petition, page 32.) It is significant that the Circuit Court's order did not bar petitioners from "associating" with the Democratic Party nor, in fact, did it bar them from the Convention. The injunction entered by the Circuit Court barred petitioners from acting or purporting to act as delegates from or on behalf of certain specified Illinois congressional districts. Petitioners by their own admission, were not elected by the people of those districts to represent them at the convention. The Circuit Court was rightfully concerned that the

State's electoral process not be subverted or that representatives be chosen in some manner not permitted by State law.

However, the Circuit Court did not seek to prevent the Convention from giving status to petitioners. It did not seek to prevent petitioners from acting at the Convention in some other capacity. The court sought only to preserve the electoral process in the State of Illinois by insuring that no one would be foisted upon the people of the State as representatives who were not, in fact, chosen by the people. This is the only proper policy in a democratic government. As stated in *People ex rel. Coffey* v. *Democratic General Committee:*

> "The dominant idea pervading the entire statute is the absolute assurance to the citizen that his wish as to the conduct of the affairs of his party may be expressed through his ballot, and thus given effect, whether it be in accord with wishes of the leaders of his party or not, and that thus shall be put in effective operation in the primaries, the underlying principal of democracy, which makes the will of an unfettered majority controlling. In other words, the scheme is to permit the voters to construct the organization from the bottom upwards, instead of permitting leaders to construct it from the top downward." (164 N. Y. at 341-342, 58 N. E. at 126 [1900]).

Petitioners do not claim that the Illinois Election Code is discriminatory or that the election was unfair or improperly administered. The Illinois Appellate Court properly upheld the validity and applicability of the statute against the contention that a private group of self appointed citizens could usurp the power of the state electorate.

III.

There Has Been No Showing of Bias by the Trial Court.

Petitioners were afforded a fair hearing before an experienced trial judge. Their claim that he was biased does not stand analysis. After employing every means available to prevent the

Circuit Court from hearing this case, petitioners, when the case was finally reached for trial two days before the Convention, moved, on the basis of an article which appeared in a Washington, D. C. newspaper, for a change of venue from Judge Donald J. O'Brien, the Chief Judge of the Chancery Division of the Circuit Court. The record shows that Judge O'Brien granted the motion after making diligent attempts to obtain a judge so that plaintiffs could have their day in court. On Saturday afternoon, Judge Covelli was reached at his home and came to court. Petitioners made no motion to disqualify Judge Covelli.

Petitioners took part in the trial before Judge Covelli. Most of the evidence was uncontested, and petitioners did not object to the findings which Judge Covelli made after hearing evidence and examining the record. Nor did they seek an immediate appeal from his order even though specific procedures were available to them to do so. Instead, as found in the August 2 hearing, petitioners, in violation of the court's July 8th order, "acted or purported to act as delegate or alternate to said Convention and sought to perform the functions of delegate or alternate including voting on behalf of the various congressional districts herein involved." (App. J3-4)

It was only after petitioners had violated Judge Covelli's order that they sought a change of venue from him, again (as with Judge O'Brien) basing their demand upon unverified newspaper articles.

Judge Covelli responded from the bench to charges made against him in defendants' second motion for a change of venue. We reprint here, in pertinent part, the remarks of Judge Covelli:

> "Insofar as the statements are attributed to me I did tell a young reporter part of it. It was two minutes to ten. I had my robe on and I was coming out here to work. This young reporter came in and said, 'Judge, will you please give me a statement?'
>
> "I said, 'I have got to go to work.'
>
> "He said, 'Well, Judge, if I don't get a statement I might get fired.'

"So I said, 'All right, sit down.'

"So he sat down and he said, 'What are you going to do about this?'

"I said, 'I can't do anything about it. I am the referee, I am the umpire. There is nothing I can do until or if a petition is presented.'

"He said, 'Well, what can they do in Florida?'

"I said, 'Well, every lawyer knows that the Federal Constitution says that each state must give full faith and credit to the decrees of another sister state.' And I said, 'The case of Rule v. Rule, 313 Illinois Appellate 108, although it is a divorce case establishes that law.' And I said, 'In my opinion the Daley outfit can file a petition in the court in Florida attaching a copy of my injunction writ and ask that court to enforce it.'

* * * * *

"Insofar as the other statement attributed to me, I did not make that statement to this reporter. What happened was I received a phone call while he was sitting in my chambers from a citizen. I have received several of them about this case. And I told all of them the same thing: There is nothing I can do, I cannot initiate any action and I don't intend to. Some of our citizens don't understand that.

"This particular man, whomever he was, said to me over the phone, 'Well, don't you think that Mr. Singer, delegating himself the powers that he has, has acted like Hitler in Germany and Mussolini in Italy?'

"And I said, 'Oh, come now, I am busy, I have got to go to work.'

"And he said, 'Well, don't you agree with me?'

"And I said, 'Yes.'

"And he said, 'No, I want you to tell me how you agree with me.'

"So I repeated those words that he used on the telephone, and this reporter, being a young man, didn't know that he had no right to quote me because I didn't say this to him, I said it on the telephone.

"Now, he came in to see me this morning and asked me what it was all about, and I told him. * * *"

Judge Covelli explained each of the remarks which he allegedly made. His remarks were taken wholly out of context and totally misconstrued. Judge Covelli's statement is unchallenged. It does not demonstrate bias. It does not demonstrate that petitioners did not receive a fair trial. In fact, petitioners did not in any way, seek to show that Judge Covelli's explanation was incorrect or untrue. The fairness and adequacy of the hearing is best demonstrated, not by the trial judge's subsequent remarks, but by petitioners' failure at any stage of the proceedings to object to the findings of fact which led to the injunction. On these uncontested findings, no reasonable judge could do anything less than enter an order preventing petitioners from superseding representatives duly chosen by the people and, on their own authority, seeking to act as such representatives.

IV.

This Case Presents Moot and Abstract Questions.

The Convention is now long over. Petitioners attended the Convention and represented the various congressional districts, albeit in violation of the Circuit Court's order. Obviously, therefore the question of whether they can attend is not before the Court. The Democratic Party Rules are in the process of being revised and replaced by the Party. This case arose out of an *ad hoc* situation, and petitioners have made no showing that the unique facts which gave rise to the case are likely to occur again. Thus, the constitutional questions, even as phrased by petitioners, are moot and abstract; they present no real case or controversy. In this posture, the petition presents no overriding constitutional questions of sufficient importance to warrant consideration by this Court at this late date. Nor have petitioners demonstrated any present or future harm from the Circuit Court's orders. Although contempt proceedings are

presently pending in the Circuit Court for the violation of the first injunction here challenged, it is clear under the law that such proceedings are proper. Well-settled principles would justify contempt proceedings here even if the order of the Circuit Court had been erroneously, or unconstitutionally, entered. *United States of America* v. *United Mine Workers*, 330 U. S. 258, 293, *concurring opinion*, 330 U. S. 309, 310 (1947); *Walker* v. *Birmingham*, 388 U. S. 307, 320-321 (1967); *United States* v. *Dickinson*, 465 F. 2d 496, 476 F. 2d 373 (5th Cir., 1973), *cert. denied*, ... U. S. ....., 42 L. W. 3247 (1973). As stated by the Court of Appeals in *Dickinson*:

> "We begin with the well-established principle in proceedings for criminal contempt that an injunction duly issuing out of a court having subject matter and personal jurisdiction *must be obeyed*, irrespective of the ultimate validity of the order. Invalidity is no defense to criminal contempt. [citing cases] 'People simply cannot have the luxury of knowing that they have a right to contest the correctness of the judge's order in deciding whether to willfully disobey it. * * * Court orders have to be obeyed until they are reversed or set aside in an orderly fashion.' Southern Railway Co. v. Lanham, 5th Cir., 1969, 408 F. 2d 348, 350 (Brown, cj, dissenting from denial of rehearing *en banc*)" (365 F. 2d at 509, emphasis the Court's)

Thus, even if this Court were to find that the Circuit Court's order was unconstitutional, that finding would not invalidate the contempt proceedings. As stated by the Court of Appeals in *Dickinson*:

> "Absent a showing of 'transparent invalidity' or patent frivolity surrounding the order, *it must be obeyed* until reversed by orderly review or disrobed of authority by delay or frustration in the appellate process, regardless of the ultimate determination of constitutionality, or lack thereof." (465 F. 2d at 509-510, emphasis the Court's)

It is significant that petitioners do not claim that the Circuit Court's order was patently frivolous or transparently invalid.

Indeed, even if such claim were made, the affirmance of the Circuit Court's decision by the Illinois Appellate Court demonstrates that, at the very least, reasonable judges could reasonably disagree with petitioners as to the constitutional questions and that the injunctions, even if constitutionally deficient, were not patently or transparently invalid. Thus, the pendency of contempt proceedings in the Circuit Court does not convert the correct decision of the Illinois Appellate Court into overriding actual constitutional questions of sufficient currency or import to merit review by this Court.

CONCLUSION.

For the foregoing reasons, respondents respectfully submit that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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APPENDIX I.

UNITED STATES COURT OF APPEALS
For the Seventh Circuit,
Chicago, Illinois 60604.

June 30, 1972

Before

Hon. WALTER J. CUMMINGS, *Circuit Judge*
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. JOHN PAUL STEVENS, *Circuit Judge*

PAUL T. WIGODA, ETC.,
Plaintiff-Appellee,

vs.

WILLIAM COUSINS, ET AL.,
Defendants-Appellants.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

(72 C 1001)

This cause is before the Court on the motion of the appellants requesting the Court to reconsider its order of June 7, 1972, dissolving its stay of the remand order of the district court and that upon such reconsideration, the remand order be stayed pending appeal.

The only issue presented on this appeal is whether the district court erred in determining that the appellants were not entitled to remove the case below from the Circuit Court of Cook County, Illinois, to the Federal District Court for the Northern District of Illinois and ordering that the cause be remanded to the state court.

A brief in support of their position has been filed by the appellants who, because of time factors involved in this litigation, have requested consideration on an expedited basis.

Upon consideration of the matter before us, and the arguments presented in appellants' brief, we are of the opinion that no worthwhile purpose would be served by suspending the decision of this Court until the filing of the appellee's brief.

Accordingly, being duly advised in the premises, the reasoning and result set forth in the memorandum opinion of the district court is now adopted as the opinion of this Court and the order of the district court is affirmed and this appeal is dismissed.

We express no opinion as to the effect of state law on the determination of proper delegates to the Convention.

APPENDIX II.

IN THE SUPREME COURT OF ILLINOIS
In Vacation After the May 1972 Term.

PAUL T. WIGODA, ETC.,
Plaintiff-Appellee,

vs. } No. .....

WILLIAM COUSINS, ET AL.,
Defendants-Appellants.

ORDER.

This matter comes on to be heard upon an emergency application for direct appeal and for emergency relief which was filed after 4:15 P. M. on August 3, 1972, on behalf of William Cousins, et al., and also upon an emergency application for direct appeal and for emergency relief which was filed on behalf of Samuel Ackerman, et al., at approximately 10:00 A. M. on August 4, 1972.

The emergency relief that is sought consists of:

(1) the transfer of appeals from orders entered in the Circuit Court of Cook County on July 8, 1972, and August 2, 1972, from the Appellate Court, First District, to this Court, and

(2) the entry of an order "staying forthwith, pending appeal, the enforcement, force and effect of" orders entered by the Circuit Court of Cook County on those dates.

Although the basic judgment order involved in this case was entered in the Circuit Court of Cook County on July 8, 1972, Notices of Appeal from that order were not filed until August 3, 1972, and August 4, 1972, respectively.

It appears from the voluminous documents that have been filed that the matters involved in this case have heretofore been presented to and considered by two United States District Courts, the United States Court of Appeals for the District of Columbia and the Supreme Court of the United States. It is further apparent that those matters are complex and that the delay in bringing the case to this Court has so curtailed the time available that disposition of those matters on the merits in a fair and intelligent manner is impossible.

It Is Therefore Ordered that the applications for emergency relief are denied.

Enter:

/s/ ROBERT C. UNDERWOOD,
Chief Justice

/s/ WALTER V. SCHAFER,
Justice,

/s/ THOMAS E. KLUCZYNSKI,
Justice,

/s/ DANIEL P. WARD,
Justice,

/s/ HOWARD C. RYAN,
Justice.

APPENDIX III.

UNITED STATES COURT OF APPEALS
for the District of Columbia Circuit

September Term, 1971
Civil 1320-71 and 1010-72

No. 72-1631

THOMAS E. KEANE,

vs.

NATIONAL DEMOCRATIC PARTY, ET AL.,
WILLIAM COUSINS, ET AL.,

Appellants.

Before: BAZELON, *Chief Judge*, FAHY, *Senior Circuit Judge*, and MACKINNON, *Circuit Judge*.

ORDER.

On July 28, 1972, appellants filed a motion for emergency rule to show cause and for injunction. Counsel for the parties have filed responsive pleadings with respect thereto.

Whereas on July 7, 1972, the Supreme Court of the United States stayed the judgments of this court entered herein July 5, 1972, and

Whereas we think doubts suggested by appellees as to the scope of the stay entered by the Supreme Court should be resolved by interpreting the Court's stay as suspending the operation of the injunction issued by this court July 5, 1972,

The Emergency Motion for a rule to show cause is denied;

And whereas in light of the status of the proceedings in this case we think this court is not an appropriate forum for the initiation of new proceedings for an injunction based on intervening events in the courts of Illinois,

The Emergency Motion for injunction is also denied.